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97TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 97-575
2d Session } { Part 2

COPYRIGHT MANUFACTURING CLAUSE EXTENSION ACT

JUNE 10, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 6198]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 6198) to amend the manufacturing clause of the copyright law, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND JUSTIFICATION

H.R. 6198 extends until July 1, 1986 the so-called "manufacturing clause" of the copyright law contained in section 601(a) of title 17 of the United States Code. Present law provides for expiration on July 1, 1982. The manufacturing clause restricts the importation of copyrighted nondramatic, literary materials published in English by American domiciled authors. Under the clause, such materials must be published in the United States or Canada in order to receive full copyright protection. Failure to do so gives infringers a complete defense against civil or criminal liability. There are certain limited exceptions to the import prohibition, including an allowance of up to 2,000 imported copies and an exception for imports on behalf of the government.

The clause is not a means of protecting authors or publishers against unauthorized importations—this is covered by a subsequent section of the copyright law (17 U.S.C. § 602). Rather, the clause is a means of protecting domestic production (printing, typesetting, etc.) of a certain class of printed material by restricting the right of a copyright

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holder or his publishing agent to import, and by denying copyright protection if they undertake production outside the U.S. or Canada and then import the product for domestic distribution.

The manufacturing clause was first enacted in 1891. At that time, it covered all copyright materials. It has since been narrowed so that presently it only covers the specific category of printed materials described above. However, this category includes most books, periodicals, newspapers, directories, and other commercial printings. Congress amended the clause in 1976 to provide for expiration as of July 1, 1982. An exception was also added for Canada, in exchange for which Canada agreed to remove its tariffs on books and certain other printed material.

The manufacturing clause has, from time to time, been cited by various trading partners as a violation of Article III of the General Agreement on Tariffs and Trade (GATT). The most recent objections have come from Switzerland and the United Kingdom. The United States position has been that since the clause was enacted prior to our accession to the GATT, it is protected by the "Protocol of Provisional Application," which excepts pre-existing legislation. During the MTN negotiations, various delegations listed the clause as a possible item for negotiations. After Congress enacted the expiration date in 1976, however, our negotiators took the position that the clause was due to expire automatically and did not enter into any negotiations concerning its elimination. Thus, there is no international undertaking on our part related specifically to the manufacturing clause. It should be noted that no other major industrial countries have provisions similar in nature to the manufacturing clause, and this fact forms the basis for much of the international criticism. However, domestic printing companies allege that many countries do maintain other restrictive tariff and nontariff barriers against their products.

On June 15, 1981, the Department of Labor issued a report containing findings that: (1) expiration of the manufacturing clause would cause a decrease in demand for American printing and publishing, and (2) expiration would ultimately result in a loss of 78,000 to 172,000 job opportunities in the printing and publishing industry, and a further loss in supply jobs such as paper and ink production. The total loss of job opportunities in the U.S. economy was estimated at 170,000 to 367,000. Studies conducted by the printing industry also indicate that the potential impact will be severe, and that as much as 50 percent of the U.S. market for printed goods could be taken over by foreign competition—primarily from the Far East. A report by the Copyright Office, however, reached far different conclusions. This report estimates that the "potential long-term import penetration level" would be between 10 and 19 percent. It also states that much of the effect would be offset by market growth, so that elimination would only cause a slowdown in the rate of job growth or at worst a small reduction in employment.

H.R. 6198 was reported favorably by the Committee on the Judiciary on May 19, 1982. Because the manufacturing clause is in reality a matter of trade law designed to protect domestic industry rather than purely a matter of copyright law, the bill was sequentially referred to the Committee on Ways and Means for appropriate action. The sole purpose of the bill is to extend the protection of the manu-

facturing clause for a limited period, while Congress and the Executive branch promulgate a more appropriate mechanism to reconcile the interests of American printing firms and workers with the need to achieve fairness in international trade. Although there is no clear consensus as to the number of jobs which might be lost through expiration, it is apparent that some dislocations will occur. The Committee recognizes that during a period of serious economic downturn and widespread unemployment it would be unfair to terminate the manufacturing clause entirely without first analyzing the overall impact on the U.S. economy and considering possible programs to facilitate the industry's adjustment to increased import competition. Extension until July 1, 1986, will allow such detailed analysis, and the Committee on Ways and Means welcomes the opportunity to assist in the permanent resolution of this matter during the period of extension.

Committee Action

The Subcommittee on Trade held a hearing on H.R. 6198 on May 27, 1982. Testimony was received from representatives of the U.S. Trade Representative, the Department of Labor, the U.S. Copyright Office, and several private sector witnesses. The Subcommittee by voice vote ordered the bill favorably reported without amendment on the same date. On June 9, the Committee on Ways and Means ordered H.R. 6198 favorably reported by voice vote without amendment. The Committee also adopted a resolution calling for a study by the U.S. International Trade Commission of the economic effects of terminating the manufacturing clause.

Description of Provisions

The bill consists of a single provision which simply strikes the reference in 17 U.S.C. 601(a) to "1982" and inserts in lieu thereof "1986".

Vote of Committee In Reporting the Bill

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill: H.R. 6198 was by voice vote ordered favorably reported by the Committee.

Oversight Findings

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee makes the following findings:

The Committee, based on the oversight activities of the Subcommittee on Trade, has concluded that it would be desirable to enact H.R. 6198 by reason of the considerations outlined above.

In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations with respect to the subject matter contained in the bill.

Budgetary Authority and Cost Estimates, Including Estimates of Congressional Budget Office

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 6198 does not provide any new budget authority or any new or increased tax expenditures.

In compliance with clause 7(a) of rule XIII and clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee provides below information furnished by the Congressional Budget Office on H.R. 6198, and required to be included herein:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 18, 1982.

Hon. Peter W. Rodino, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6198, a bill to amend the manufacturing clause of the copyright law, as ordered reported by the House Committee on the Judiciary, May 18, 1982.

H.R. 6198 would continue through fiscal year 1986 the current practice of requiring certain books be printed in the United States or Canada in order to qualify for copyright protection. It is expected that this provision would have no budget impact.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

The Committee concurs in the estimate of the Congressional Budget Office and the Committee on the Judiciary that H.R. 6198 will have no budget impact.

Inflationary Impact

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 6198 would not have an inflationary impact on prices and costs in the operation of the general economy.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTION 601 OF TITLE 17, UNITED STATES CODE

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Prior to July 1, [1982], *1986*, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply—

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(2) where the United States Customs Service is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter.

(3) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale, is sought—

(A) by any person with respect to no more than one copy of any work at any one time;

(B) by any person arriving from outside the United States, with respect to copies forming part of such person's personal baggage; or

(C) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;

(5) where the copies are reproduced in raised characters for the use of the blind; or

(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada, are publicly distributed in the United States; or

(7) where, on the date when importation is sought or public distribution in the United States is made—

(A) the author of any substantial part of such material is an individual and receives compensation for the transfer or

license of the right to distribute the work in the United States; and

(B) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

(C) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

(D) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (B), and the transferee or the licensee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise.

(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if—

(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada; and

(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action or criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the nondramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute copies are owned by the same person who owns such exclusive rights in the nondramatic literary material, if the infringer proves—

(1) that copies of the work have been imported into or publicly distributed in the United States in violation of this section by or with the authority of the owner of such exclusive rights; and

(2) that the infringing copies were manufactured in the United States or Canada in accordance with the provisions of subsection (c); and

(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work, the copies of which have been manufactured in the United States or Canada in accordance with the provisions of subsection (c).

(e) In any action for infringement of the exclusive rights to reproduce and distribute copies of a work containing material required by this section to be manufactured in the United States or Canada, the copyright owner shall set forth in the complaint the names of the persons or organizations who performed the processes specified by subsection (c) with respect to that material, and the places where those processes were performed.

DISSENTING VIEWS

We oppose extension of the manufacturing clause of the copyright law through July 1, 1986 as provided in H.R. 6198. The clause is contrary to U.S. obligations under the General Agreement on Tariffs and Trade (GATT), discriminates against a particular class of copyright holders, and does little to protect jobs on enhance the competitive position of the printing and publishing industries.

The United States stands alone among major book publishing countries in restricting its book trade through manufacturing requirements in its copyright law. Even in the United States, no such manufacturing requirement exists with respect to works of art, musical compositions, dramatic works, sound recordings, or motion pictures. The statute discriminates against a particular group of authors and signals to the world that we take too lightly our obligations under international trading rules. Furthermore, there are no special circumstances or conditions within the industry to justify the trade protection granted by the clause.

The clause violates GATT in two ways. First of all, it is contrary to the principle of national treatment whereby countries agree to provide importers no less favorable treatment than domestic producers. Secondly, it violates the most-favored-nation principle by providing Canada, and no other trading partner, an exemption from the manufacturing requirement.

Our trading partners have repeatedly raised the GATT illegality of the manufacturing requirement, particularly in the recent Tokyo Round of multilateral trade negotiations. The U.S. response has been that the clause was not an appropriate topic for negotiations because it was to expire automatically this year. Our credibility will be lessened considerably if we state that the clause is unwarranted and should be allowed to expire on a date certain, as the Congress did in 1976—and present that position to the world—yet, when the time comes we continue to reenact the offensive practice. So far our trading partners have waited patiently for the clause to expire. However, they are unlikely to accept a four year extension without a formal challenge in the GATT that could lead to prompt retaliation against U.S. exports.

There is little justification for maintaining the clause from a domestic point of view. The printing and publishing industry is healthy and vibrant and encompasses a vastly broader range of activity than that covered by the manufacturing clause. Even in areas where the clause applies, the uniqueness of the American market or the time sensitivity of the material (such as newspapers and magazines), make it unlikely that imports will serve as a substitute for domestic production or will make significant inroads in the U.S. market.

Studies by the Congressional Research Service and the Copyright Office indicate that removal of the clause will have a minimal effect on jobs, since growth in exports and domestic demand are expected to

offset any job dislocation that might occur through imports. Fair warning already has been given to industry and labor that they will be expected to compete effectively in an open market and, by all indications, they have the strength and capability in the printing and publishing sector to do so.

It is time to accept our responsibilities in this matter both at home and internationally. We urge our colleagues to reject H.R. 6198.

BARBER B. CONABLE, Jr.
BILL FRENZEL.
BILL GRADISON.

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